

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :
 : 16 CR 809 (VM)
 - against - :
 :
 RICHARD FELIZ, : **DECISION AND ORDER**
 :
 Defendant. :
-----X
VICTOR MARRERO, United States District Judge.

Richard Feliz ("Feliz") is currently serving a sentence of 324 months' imprisonment at FCC Allenwood. (See Dkt. No. 327 at 3.) By an undated letter, Feliz moved this Court for compassionate release from custody to home confinement. (See "Motion," attached). The Court now construes the Motion as being made pursuant to 18 U.S.C. Section 3582(c)(1)(A) ("Section 3582"). For the reasons set forth below, the Court DENIES the Motion.

Section 3582 allows a court to reduce a term of imprisonment or supervised release after considering the factors set forth in 18 U.S.C. Section 3553(a) and finding that "extraordinary and compelling reasons warrant such a reduction." See Section 3582(c)(1)(A)(i). However, a court may do so only upon motion of the Director of the Bureau of Prisons ("BOP") or "upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the [BOP] to bring a motion on the

defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier." See Section 3582(c)(1)(A).

Feliz bases his Motion on the COVID-19 pandemic, noting its deadly impact. He states that he is at higher risk of negative complications from the coronavirus because he has a cataract that allegedly has not been adequately treated and because men generally have a higher risk of dying due to the virus. (See Motion at 1-2.) Feliz further describes his efforts at rehabilitation. (See id. at 2.) However, Feliz does not mention whether he has submitted a request for compassionate release on these grounds to the warden of his facility.

Because Feliz provides no proof that he has exhausted his administrative avenues for relief with the BOP or waited over thirty days for a response, the Court must deny his motion at this time. See United States v. Mathis, No. 02 CR 891, 2020 WL 550645, at *1 (E.D.N.Y. Feb. 4, 2020). As the Supreme Court has instructed, "[w]here Congress specifically mandates, exhaustion is required." McCarthy v. Madigan, 503 U.S. 140, 144 (1992). Any argument that it would be futile for Feliz to exhaust his administrative remedies is unavailing, as the statute contains an express futility provision: the ability to seek judicial relief if

the BOP has not acted within thirty days. See Section 3582; see also Booth v. Churner, 532 U.S. 731, 741 n.6 (2001) (“[W]e will not read futility or other exceptions into statutory exhaustion requirements where Congress has provided otherwise.”); Theodoropoulos v. I.N.S., 358 F.3d 162, 172 (2d Cir. 2004) (“[C]ourts are required to strictly enforce statutory exhaustion requirements.”). The United States Court of Appeals for the Third Circuit recently confirmed that Section 3582’s exhaustion requirements cannot be waived, even during the current pandemic. See United States v. Raia, 954 F.3d 594, 597 (3d Cir. 2020).

If the BOP either denies Feliz relief or takes longer than thirty days to respond to his request, then the Court can consider a renewed motion for compassionate release by Feliz on its merits. The Court directs that Feliz attach documentation proving his satisfaction of the exhaustion requirements and inadequate treatment of his medical condition if he refiles his motion, so that the Court may render a decision on an adequate factual record. See United States v. Bolino, No. 06 CR 806, 2020 WL 32461, at *1, *1 n.1 (E.D.N.Y. Jan. 2, 2020).

Accordingly, it is hereby

ORDERED that the motion of Richard Feliz (“Feliz”) for compassionate release (See attached letter) is **DENIED**.

Feliz may refile his motion upon compliance with the exhaustion requirements set forth in 18 U.S.C. Section 3582(c)(1)(A). The Clerk of Court is directed to mail this Decision and Order to Richard Feliz at Federal Correctional Complex Allenwood, P.O. Box 3000, White Deer, PA 17887.

SO ORDERED.

Dated: New York, New York
10 June 2020



Victor Marrero
U.S.D.J.

United States of America

v.

Feliz

(S3) 16-CR-809

Honorable Judge Victor Marrero

PROSE Motion for Compassionate Release
From Custody to Home Confinement

I hereby file this motion for compassionate release on an emergency basis. I'm being housed at Allenwood U.S. Penitentiary, White Deer, PA. Currently 799 inmates who have tested positive with the COVID-19 virus and 27 or more inmates have died from the COVID-19 virus. No person should suffer undue hardship and a death sentence if contracted with the virus while in custody of the Bureau of Prisons. Over one million Americans tested positive and the number of deaths due to COVID-19 is expected to exceed the hundred thousand mark. Among the number of people that contracted the virus my mother is one of them. She contracted COVID-19 from being on the medical front line helping save the lives of the people becoming ill due to this virus while putting her own life at risk.

This is why I'm asking for your consideration and requesting that I be reviewed for compassionate release from custody to home confinement or that I be reviewed for a reduction in sentence due to this deadly pandemic. It is also a well known fact that men are more prone to contracting the COVID-19 virus and are at a higher risk of dying from the virus. I also suffer from a disability, I was born with a cataract in my right eye and my vision is very poor. I've been incarcerated for 42 months and have yet to receive the

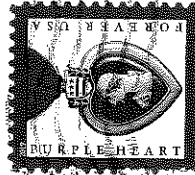
Right MEDICAL Attention I need for my Disability, so if the VIRUS IS CONTRACTED my CURRENT sentence could very much possibly turn into a death sentence for me and that is not the sentence I agreed to, Honorable Judge Victor Marrero being in custody with this pandemic going on is a death ~~row~~ sentence. The possibility of me contracting and dying from this virus is high. Please take my motion for compassionate release from custody to home confinement into consideration as well as a ~~time~~ reduction in sentence.

I have been rehabilitating myself and taking every step NECESSARY to better myself and step back into society a changed and improved man. Since my incarceration I've obtained my B.E.D and now preparing myself to further my education and go for my PH.D. in Psychology once I obtain the degrees that need to be obtained beforehand. I plan on becoming a counselor and a motivational speaker to help the youth and adults in the community and help us grow by starting up a non-profit organization as well as a prevention program for the youth to avoid the crime life and for them to avoid the experience of mass incarceration. Please review my case and take this motion into consideration, it would really be appreciated. Thank You.

Respectfully Submitted,



Richard Feliz
#78341-054



100-443886-100

INMATE NAME/NUMBER: RICHARD FELIZ, 78341-0541
FEDERAL CORRECTIONAL COMPLEX-ALLENWOOD U.S.P.
P.O. BOX 5000
WHITE DEER, PA 17887

Walden Pond, MA 01973
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
VICTOR MARRERO
UNITED STATES DISTRICT JUDGE
40 CENTRE STREET
NY, NY 10007

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